

## REMARKS

Reconsideration of the above-identified patent application in view of the amendments above and the remarks following is respectfully requested.

Claims 1-11 and 13-23 are pending in the application. In the Office Action dated May 3, 2007, all claims have been rejected. The rejection is respectfully traversed. In view of Examiner's comments and in order to further distinguish the invention over the cited prior art and expedite allowance, Applicant has further amended independent claims 1, 10 and 18 to emphasize the essentially inventive feature of arrangement of foods in "levels" wherein:

"each level includes foods of substantially similar carbohydrate content and wherein said substantially similar carbohydrate content varies from level to level"

Support for the amended language may be found in p. 4, line 15 to p. 5 line12, p. 5, line 32 to p. 6, line7 and p. 10, line 31 to p. 11, line 20.

### § 112 Rejections

Claim 1 has been rejected for including the relative indefinite term "desired". Claim 10 has been rejected for including the relative term "required". Applicant has removed both terms from these claims and believes the amended language overcomes the § 112 rejection.

### § 102 Rejections

The Office Action upheld the rejection claims 1 and 2 under § 35 U.S.C. 102(b) as being anticipated by Slack (US 5,711,164), stating that Slack teaches spatially organizing foods in levels, the food in level being apparently of the similar carbohydrate content. Slack does not mention carbohydrates at all in his disclosure. *Mutatis mutandis*, he does not disclose "levels" defined as groups of foods with essentially similar carbohydrate content, and therefore cannot teach claims 1 and 2, even in their previously emended form. Applicant further points out the following paragraph from his previous response:

"Since claim 3 has not been found by the Examiner to be anticipated by Slack, Applicant submits that the rejection of original claim 1 is now moot. Applicant further submits that amended claim 2, which depends from claim 1, is now similarly not anticipated by Slack. Moreover, claims 1 and 2 are not even rendered obvious by Slack".

### **§ 103(a) Rejections**

The Examiner has rejected claims 1-23 under 35 U.S.C. § 103(a) as being unpatentable over Bangs et al (US 6,039,989). The Examiner's rejection is respectfully traversed.

In response to Examiner's assertion that Applicant did not provide any criticality of a specific spatial arrangement of foods according to levels (groups) of substantially similar carbohydrate foods, Applicant submits that such criticality is now recited in claims 1, 10 and 18 through the whereby clause, and has extensive backing in the specification. As for the Examiner's assertion that there is no mention of a specific arrangement, Applicant respectfully disagrees and submits that such specific arrangement is clearly recited at least in previously amended or original claim 3, 4, 14 and 23. Applicant submits that when claim 3 recites:

"a bottom level with N containers of substantially carbohydrate free foods to a top level with M containers of high carbohydrate content foods, and wherein  $M < N$ ".

it exactly recites "specific foods should be placed in specific places", in contrast with Examiner's assertion. Same goes for at least claims 4, 14 and 23. The configuration of the claimed kit is an essential inventive feature in that the amount of foods (and containers) in each level decreases from foods with low or zero carbohydrate content to foods with high carbohydrate content, when the total carbohydrate content of the kit is predetermined. The configuration allows for easy understanding and remembering of which foods have which carbohydrate content (zero-low, medium or high), see e.g. specification p. 11, lines 7-9 and 12-20.

Applicant respectfully submits that he has not just "recognized another advantage which would flow naturally from following the suggestion of the prior art" in inventing a kit of a particular shape to hold the foods in levels as recited in the claims. There is nothing in prior art, most certainly in that used in the rejections to

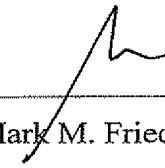
teach, fairly suggest or even remotely imply arrangement of foods in levels, wherein foods having substantially similar carbohydrate contents form one level and wherein the substantially similar carbohydrate content varies from level to level. The configuration of the kit is not a matter of choice but of a definite design: levels include less and less foods as the food carbohydrate content increases. Rearranging the foods in a kit would certainly modify the operation of the kit: for example, in the arrangement recited in claim 3, any change between levels will increase the total carbohydrate content of the kit, defeating the purpose of weight loss by providing a total carbohydrate content larger than the predetermined amount. No prior art structure performs the intended use of the present invention, i.e. a diet regimen based on a defined, limited carbohydrate content, based on foods organized in a kit according to carbohydrate content (see specification, p. 11, lines 10-20). Therefore, Applicant continues to argue that the invention, as recited in claims 1-11 and 13-23 is not rendered obvious by Banks alone or in combination with others.

Applicant further stands by the arguments presented in the previous response.

In the event that the Examiner ultimately decides to maintain any or all of the rejections, Applicants requests that the present claim amendments be entered. The amendments introduce no new issues and instead arise from the text of previously-submitted and considered claims that are now canceled.

In view of the above amendments and remarks it is respectfully submitted that claims 1-11 and 13-23 are in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,



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